

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 16,674
)	
Appeal of)	

INTRODUCTION

The petitioner appeals a decision by the Department of PATH establishing a beginning date for her son's VHAP benefits at a date later than his date of application. The Department has moved to dismiss the case for lack of jurisdiction due to an untimely appeal.

FINDINGS OF FACT

1. The petitioner assisted her adult son in filing a VHAP application, which was submitted on January 28, 2000. He needed some immediate dental work and had an appointment for February 1. The petitioner told the worker of her son's emergency and was advised to apply for General Assistance for emergency dental care if he needed emergency care. The petitioner did not ask the worker when the VHAP benefits would officially begin nor did the worker offer any information regarding a date. The petitioner assumed that any eligibility would be retroactive to the date of application since that is

the method employed in other Department programs she has participated in.

2. The petitioner was mailed a notice with regard to the VHAP application dated February 21, 2000. That notice informed her that her son had been found eligible for VHAP benefits beginning on February 18. The notice also encouraged the petitioner to read the back of the notice which included her appeal rights. The petitioner says she got the notice but did not focus on or remember the information regarding the first date of eligibility.

3. The petitioner's son attended his February 1 appointment but only had some limited evaluation performed at that time. He was rescheduled for oral surgery with a surgeon on February 29 and rescheduled again for March with a dentist because of provider coverage rules in the VHAP program. In any event, the petitioner's son did have the surgery and it was covered by VHAP. VHAP did not pay for the initial visit on February 1 because the petitioner's son was not covered for that period.

4. The petitioner's son's VHAP coverage was cancelled on April 15 because he failed to pay the \$10.00 premium. The petitioner is not appealing that determination.

5. On May 2, 2000, the petitioner received an \$83.00 bill from her dentist for the February 1 services. She was told that VHAP had been asked to pay but would not because the petitioner's son was not covered on that date.

6. Because the petitioner's son needed more dental work and was no longer on VHAP, he applied for General Assistance to cover his needs and was granted assistance. On August 24, 2000, the petitioner's son applied for GA coverage of his February 1, 2000 dental bill but was denied because the bill was over 30 days old.

7. On September 18, 2000, the petitioner appealed the denial under General Assistance claiming that she could not have requested GA coverage for the bill within 30 days because she did not know it would not be covered until much later. She also claimed that she had been misled by the Department back in January with regard to coverage for her son's February 1, 2000 appointment.

ORDER

The petitioner's appeal of the establishment of an onset date for VHAP eligibility is dismissed because it is past the ninety-day appeal limit. The Department's decision to deny

General Assistance benefits for coverage of the February 1 bill is affirmed.

REASONS

Under rules governing proceedings before the Human Services Board appeals from decisions by the Department of Social Welfare [now PATH] . . . shall not be considered by the board unless the appellant has either mailed a request for fair hearing or clearly indicated that he or she wishes to present his or her case to a higher authority within 90 days from the date when his or her grievance arose.

Human Services Board
Fair Hearing Rule No 1.

The regulations governing the VHAP program also require that "[a] request for a fair hearing must be made within 90 days of the date the notice of the decision being appealed was mailed. W.A.M. 4002.6. There is no question that the petitioner's "grievance arose" when the Department mailed her the notice of decision on February 21 telling her that her son's VHAP eligibility would begin on February 18. The petitioner does not deny that she received that notice but either did not read it carefully or did not reflect on its importance. The petitioner's claim that she did not know that

the February 1 bill would not be paid until much later when her physician billed her for the visit is not supported by the facts. She either knew or should have known as early as February 21 that VHAP would not pay for medical services before February 18, 2000.

Given that her "grievance arose" on February 21, 2000, the petitioner was required by the Board's and the Department's regulations to file an appeal on or before May 21, 2000. The petitioner did not file an appeal until September 18, 2000, almost four months out of time. No evidence was put forth as to why she might not have been able to meet that deadline. As such, the Department's motion to dismiss the case for lack of jurisdiction should be granted.

Even if the petitioner's appeal had been timely, the facts she presented were far from persuasive that the Department misled her in any way. It appears rather that the petitioner had convinced herself that her son would be eligible from his date of application based on her prior experience with other programs. The regulations in fact allow the Department to make decisions within thirty days of the date of the VHAP application and provide that decisions are effective on the day that the decision is approved. W.A.M. 4002.1 and 4002.31. The petitioner was advised at the time of

her application to apply for emergency dental assistance. She did not take that step, rather she went ahead with her appointment and applied for General Assistance to pay the bill almost seven months after it was incurred.

The Department clearly has the authority to pay for emergency dental examinations and diagnostic measures. W.A.M. 2623. However before it can make such a payment, the Department must determine that the applicant has an emergency medical need at the time of the application for General Assistance. W.A.M. 2620 and 2602. The petitioner's son presented no evidence from which it could have been found that non-payment of the February 1 bill would result in a medical emergency for him on August 24, the date he applied for GA. At that time, the dental bill had ripened into an old debt for which he might be financially liable but non-payment of which posed no medical problem for him at that time.¹

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¹ There is nothing in the regulations which would require the Department to pay bills incurred during the last thirty days nor is there anything which would prevent the payment of older bills if such payment was essential to continuing emergency medical services to a petitioner. The Department has apparently adopted this 30-day procedure as a way to focus on current medical needs.